A Journal of All India Chartered Accountants' Society

AICAS
ESTD. - 1989

The Chartered Accountant World

Volume XXVII | No. 3 | March 2016

EDITORIAL

Large Bank Borrowers - Are they willful defaulters?

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The RBI advisory for mandatory provisions of Non-Performing Assets and inclusion of most of the top borrowers in the list of 150 groups covering lakhs of crores of borrowings has brought to surface a very major issue.

The weaknesses in the health of the borrowers noticed by the Reserve Bank on the basis of delay in payment of interest or repayment of installments or diversion in financial parameters (debt-equity norms, liquid ratio, delay in project implementation, non achievement of targeted turnovers, non adherence to restructuring terms and similar other parameters) or other financial indicators indicating weaknesses in the health of borrowers and resultant mandatory treatments of the amount borrowed as non performing assets has broken all previous records. The entire banking system in the country is under threat of a major shakeup. It is therefore very important to examine as to whether every default makes a borrower a "defaulter" and all the more a "willful defaulter". **It is important to undertake a detailed examination, including a forensic audit of all major and material defaulters, to identify as to whether the poor health of a particular borrower or a group is result of economic slowdown, policy hiccups or other matters beyond the control of borrowing entity and the promoters.** Additionally, the following important aspects are required to be considered to identify as to whether a borrower is a "defaulter" and all the more a "willful defaulter". An overall holistic assessment of the following parameters would be very important:

- **The factual disclosure -** Whether all the facts relating to the borrowing entity, the promoter (and the group entities belonging to beneficial owners), the project, capacity, cost of the project, means of finance, suppliers, market study, and other project parameters have been disclosed in a true and fair manner to the bankers at the time of initial borrowings, additional borrowings (in case of over-run) and expansions or diversifications.
- **Diversion of Funds**
- **Inclusion of bogus bills/ inflated bills for purchase of capital assets or operating expenses -** Purchases made from related parties/ parties having skeleton operations(i.e. the parties used for routing the transactions) could indicate prima facie lack of due diligence and lack of fair play. In the process of purchase, in terms of finance control, due diligence records of the supplier will be very important to examine.
- **Book entries for creation of capital or false capitalization and various other financial engineering to manipulate the correct picture.**

Role of the Reserve Bank of India

The RBI needs to strengthen its regulatory framework. The entire responsibility of the current scenario has to be taken by the Reserve Bank. The efficacy of RBI inspections, regulatory guidelines, Statutory Audits, Concurrent Audits, Internal Audits, Inspection audits, Stock Audits and credit monitoring audits have been very severely damaged due to lack of timely initiatives of the RBI to ensure proper monitoring with detailed scope, coverage and reporting requirements of not only in respect of lending banks but also of all major borrowers. The remarks contained in special long form audit reports given by auditors for all major borrowers exceeding 2 crore borrowings, were either not looked at or were not followed up properly at the end of the regulators as well as by the banks.

The appointment of auditors by banks management at the Central Statutory Auditor level as well as the branch level and reduction in number of branches being subject to audit at the initiative of Reserve Bank and the then Finance Minister had put a very big nail in the coffin of financial proprietary.

Way Forward

It is very important not only to analyse the reasons of the current situation and to provide a fair deal to the industry as well as to the banking professionals. It is also necessary

contd......Pg.3

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LATEST IN FINANCE

1.0 DIPP's discussion paper to form policy framework for SEP holders & licensees

The Department of Industrial Policy and Promotion (DIPP) has prepared a discussion paper on Standard Essential Patents (SEPs) and their availability on Fair, Reasonable and Non-Discriminatory (FRAND) terms.

2.0 Amit Mitra named chairman of GST panel

West Bengal Finance Minister Amit Mitra was named the new chairman of the Empowered Committee of State Finance Ministers on Goods and Services Tax (GST).

3.0 CIBIL rolling out info about first-time borrowers

Credit Information Bureau (India) has designed a credit risk assessment system to gauge first-time borrowers, according to MV Nair, Chairman, CIBIL.

The system which now has a significant database of credit history, from microfinance institutions, traders and self-help groups, can give huge insights to financial institutions which are seeing a growing number of people "new to credit".

4.0 Start-ups with annual turnover of less than Rs 25 cr to get tax breaks

A company with an annual turnover of less than Rs 25 crore in the first five years will be eligible for tax breaks and other incentives under the government's start-up policy if it fulfils certain conditions.

According to the definition notified by the department of industrial policy and promotion (DIPP), an entity will be called a start-up up to five years from the date of its incorporation/ registration provided its turnover for any of the financial years doesn't exceed Rs 25 crore. It must be working towards "innovation, development, deployment or commercialisation of new products, processes or services, driven by technology or intellectual property". A company working on "significantly improved existing product or service or process that will create or add value for customers or workflow" will also be eligible for incentives if it fulfils other conditions. However, any such entity formed by "splitting up or reconstruction of a business already in existence" won't be considered a start-up.

Prime Minister Narendra Modi had on January 16 unveiled a package of incentives to boost the start-up eco-system in the country, offering such firms a tax holiday and inspector raj-free regime for three years, capital gains tax exemption and a Rs 10,000-crore corpus to fund them.

5.0 Vedanta bags India's first gold mine auction

Vedanta Ltd has won India's first-ever auction of a gold mine, a provincial government official said, as the nation opens up the sector to private companies to curb overseas purchases of the metal.

BANKING

1.0 RBI tweaks SDR Norms

The Reserve Bank of India (RBI) on Thursday told banks to provide at least 15 per cent of their residual loan to a company while converting debt to equity under the Strategic Debt Restructuring (SDR) norms, by the end of the 18-month period from the reference date.

2.0 New RBI norms to help banks unlock Rs. 40,000 cr

The Reserve Bank of India relaxed norms relating to the treatment of certain balance-sheet items, including property, which will help banks unlock capital aggregating about Rs.40,000 crore.

Banks have now been allowed to include some items, such as property value and foreign exchange, for calculation of Tier 1 capital (CET1), instead of Tier 2 capital

3.0 RBI to soon undertake incognito visits to bank branches

Referring to the complaints of misspelling of third-party products by banks, the governor stated that the findings of some recent incognito visits undertaken by the Reserve Bank of India (RBI) on sale of third-party products by banks and study undertaken by some academicians/ consumers activists, had hinted at miss-spelling of products, especially insurance products, by banks.

EDITORIAL

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Banking Sector – Under scanner

to put in place necessary regulatory measures to prevent occurrence of ugly situations. Some of the suggestions which may be considered are as follows:

- Group concept need to be implemented for all appraisals and assessments and the borrowers promoters are required to be mandated to disclose actual performance of the units/companies managed by them (including all close relatives) during last twenty years and cases of defaults, settlements diversions, failures and good performance.
- The borrowers group need to confirm on affidavit about true and fair disclosure and personal liability of the promoter and his family (close relatives), in case of wrongful disclosures or non-disclosure of any material aspect or diversion of funds, over invoicing, in genuine book entries and so on.
- The lending bankers need to play a very important role in credit monitoring. The credit monitoring need to be intensified as the exposure per unit or per group goes up based on overall exposure of the banking system as a whole and not based on exposure on respective banks alone.
- Multiple banking needs to be replaced by consortium banking. The consortium leader and the participating banker's rights and responsibilities to be defined by clear cut code. The banks need to ensure that basic fundamental principle of financial management is being followed by the borrower as well as the group. NO borrowing outside consortium to be permitted in the group companies also.
- Effective bank nominees need to be appointed on the board of the borrowers as well as the group entities. Higher the exposure, higher the number of borrowers, nominees on the board of directors.
- Utilisation of Funds - The current monitoring of utilization of funds is only a force. At best, a certificate is sought from the auditors or the independent lender's engineers. None of this is a serious exercise.

It is important to appoint independent monitoring agencies and independent auditors to ensure a check on diversion of funds , bogus bills, false book entries and unethical financial engineering.

The real estate Regulation- A major step

Rajya Sabha has just passed The Real Estate (Regulation & Development) Bill, 2015. Lok Sabha is likely to pass it in next couple of days and is expected that before the end of March 2016 The Real Estate (Regulation & Development) Act will become a reality. The following major important aspects are worth noting:

- State Level real estate regulatory authorities will be set up to redress the grievances of the builder and to implement the Act.
- The bill will govern residential as well as commercial transactions and will apply to all projects of 500 square meters or more or eight apartments or more. All existing projects are to be registered within three months from a date to be notified.
- 70% of the project funds collected from customer is to be parked in a dedicated bank account to be used only for the specific project, with severe implications on diversion of funds.
- The consumers and the regulators will be notified:
  - ◆ Project Plan
  - ◆ Project layout
  - ◆ Government Approval
  - ◆ Land Title Status
  - ◆ Sub contractors to projects
  - ◆ Schedule for complexions
- Transactions have to be mandatorily undertaken on basis of **carpet area** as the concept of super built up area has been made illegal.
- Delay in handing over possession/ completion of project as compared to committed delivery will impose interest on builder at the same rate at which the builder is charging from the customer on delayed payment.
- Deficiency in construction can be notified within one year from handing over - builder to be made responsible to correct.
- Changes in the plan of construction can be made only with prior approval of flat owners.
- A jail term of three years with or without fine has been prescribed.

The aforesaid regulatory framework will bring a major change to the Indian Real estate Sector and will eradicate fly by night operators and manipulators. The Builders only with deeper pockets, ethical and transparent practices will grow. Real estate industry will have sustained growth. The consumer being the flat buyers will be biggest beneficiaries.

BUDGET HIGHLIGHTS

RELIEF TO SMALL TAX PAYERS

- Raise the ceiling of tax rebate under section 87A from Rs. 2000 to Rs. 5000 for individuals with income upto Rs. 5 laks.
- Increase the limit of deduction of rent paid under section 80GG from Rs. 24000 per annum to Rs. 60000

BOOST EMPLOYMENT AND GROWTH

- Increase the turnover limit under Presumptive taxation scheme under section 44AD of the Income Tax Act to Rs. 2 crores to bring big relief to a large number of assessees in the MSME category.
- Extend the presumptive taxation scheme with profit deemed to be 50%, to professionals with gross receipts up to Rs. 50 lakh.
- Accelerated depreciation wherever provided in IT Act will be limited to maximum 40% from 1.4.2017
- Benefit of deductions for Research would be limited to 150% from 1.4.2017 and 100% from 1.4.2020
- Benefit of section 10AA to new SEZ units will be available to those units which commence activity before 31.3.2020.
- The weighted deduction under section 35CCD for skill development will continue up to 1.4.2020
- 100% deduction of profits for 3 out of 5 years for startups setup during April, 2016 to March, 2019. MAT will apply in such cases.
- 10% rate of tax on income from worldwide exploitation of patents developed and registered in India by a resident.
- Complete pass through of income-tax to securitization trusts including trusts of ARCs. Securitisation trusts required to deduct tax at source.
- Period for getting benefit of long term capital gain regime in case of unlisted companies is proposed to be reduced from three to two years.
- Non-banking financial companies shall be eligible for deduction to the extent of 5% of its income in respect of provision for bad and doubtful debts.
- Determination of residency of foreign company on the basis of Place of Effective Management (POEM) is proposed to be deferred by one year.
- Commitment to implement General Anti Avoidance Rules (GAAR) from 1.4.2017.
- Basic custom and excise duty on refrigerated containers reduced to 5% and 6%.

PROMOTING AFFORDABLE HOUSING

- 100% deduction for profits to an undertaking in housing project for flats upto 30 sq. metres in four metro cities and 60 sq. metres in other cities approved during June 2016 to March 2019 and completed in three years. MAT to apply.
- Deduction for additional interest of Rs. 50,000 p.a. for loans up to Rs. 35 lakh sanctioned in 2016-17 for first time home buyers, where house cost does not exceed Rs. 50 lakh.

RESOURCE MOBILIZATION

- Additional tax at the rate of 10% of gross amount of dividend will be payable by the recipients receiving dividend in excess of Rs. 10 lakh per annum
- Surcharge to be raised from 12% to 15% on persons, other than companies, firms and cooperative societies having income above Rs. 1 crore.
- Tax to be deducted at source at the rate of 1 % on purchase of luxury cars exceeding value of Rs.10 lakh and purchase of goods and services in cash exceeding Rs. 2 lakh.
- Securities Transaction tax in case of 'Options' is proposed to be increased from 0.017% to 0.05%.
- Equalization levy of 6% of gross amount for payment made to non- residents exceeding Rs. 1 lakh a year in case of B2B transactions.
- Krishi Kalyan Cess, @ 0.5% on all taxable services, w.e.f. 1 June 2016.
- Infrastructure cess, of 1% on small petrol, LPG, CNG cars, 2.5% on diesel cars of certain capacity and 4% on other higher engine capacity vehicles and SUVs.
- Excise on readymade garments with retail price of Rs. 1000 or more raised to 2% without input tax credit or 12.5% with input tax credit.
- Clean Energy Cess' levied on coal, lignite and peat renamed to 'Clean Environment Cess' and rate increased from Rs. 200 per tonne to Rs. 400 per tonne.
- Excise duties on various tobacco products other than beedi raised by about 10 to 15%.

RATIONALISATION

- Disallowance under Sec.14A to be limited to 1 percent of average monthly investment yielding exempt income subject to actual expenditure claim.

- E-filing of tax return mandatory, if income except minimum chargeable to tax, without considering exempted income from capital gain under sec. 10 (38).
- ·Time barring - 9 months from end of assessment year in which return is required to be filed.
- Appeal effect to be given in 3 months. Reassessment within 12 months
- Penalty under section 271(1)(c) replaced by Section 270A.Penalty @50% for underreporting of income and 200% in case of wrong reporting of income.
- No penalty if tax and interest as per assessment order is paid in time and no appeal is preferred except in case of misreporting of income (Application to be made)
- Witholding tax (TDS) limits increased and rates of TDS rationalised
- PAN not mandatory for non- residents, can give alternative prescribed
- Mandatory "E-Assessment" in 7 metros without any assessee and department interface except in special cases/ circumstances.

SCHEMES

- Income declaration scheme to levy tax @ 30%, interest of 7.5% and penalty of 7.5% of undeclared income (Declaration 1st June, 2016 to 30 September, 2016)
- Assessee's subjected to retrospective amendment related demands can pay only tax without any interest or penalty and can withdraw from litigation.
- Kar Samadhan scheme - To pay only tax and interest of minimum penalty

FEMA / IRDA

1.0 Instead of FIPB, IRDAI can now approve increase in FDI in insurance

Finance Minister Arun Jaitley announced that all 49 per cent of foreign investment limit in private insurance companies could come through the automatic route. However, management and control of insurance companies would have to be in the hands of Indian entities.

The same rules will apply to pension funds because the Pension Fund Regulatory and Development Authority (PFRDA) Act automatically links the foreign investment threshold in the pension sector with the insurance sector.

2.0 Insurers can speed up products for corporate clients

- IRDAI has said commercial products in general insurance will be sold under use-and-file procedures
- Use-and-file allows insurers to market products without prior approval of the Irdai
- New guidelines will come into force with effect from April 1

3.0 Insurers can't impose restriction on purchase of policy

With a view to protect the interests of policy holders and prevent unhealthy market practices, It is hereby clarified that there shall be no restriction whatsoever on sourcing/servicing of motor insurance business (including personal accident policies, wherever applicable) by any agent/intermediary or insurer/insurance office on the ground that they have tie-up with any motor dealers/manufacturers.

4.0 Acquisition of Securities or units by a Non-Resident Indian (NRI), on Non-Repatriation basis

A Non-resident Indian (NRI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by Non-Resident Indians, may acquire and hold, on non-repatriation basis, equity shares, convertible preference shares, convertible debenture, warrants or units, which will be deemed to be domestic investment at par with the investment made by residents. Without loss of generality, it is stated that

- An NRI may acquire, on non-repatriation basis, any security issued by a company without any limit either on the stock exchange or outside it.
- An NRI may invest, on non-repartition basis, in units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
- An NRI may contribute, on non-repatriation basis, to the capital of a partnership firm, a proprietary firm or a Limited Liability Partnership without any limit.

ACCOUNTING / AUDIT

1.0 Forensic audit must for all bad loans, Parliament Panel to RBI

Cautioning that the rising trend of non performing assets (NPAs) with banks has the potential to damage the growth story, the Finance Standing Committee of Parliament has called for immediate forensic audit of all restructured loans that had turned into bad debts.

Forensic audit is also required for wilful defaults and Reserve Bank of India (India) has been asked to prepare guidelines for the process. The analytical reports of the forensic audit should be submitted to the panel in six months, it said in its report.

RBI Rapped
RBI, as a regulator, did not succeed in implementing its own guidelines, it said, and asked the apex bank to be proactive and monitor the issue on a regular basis.

Empowering Banks
On strategic debt restructuring, the report said it could empower banks to take control of the defaulting entity, and recommended that a change in management must be made mandatory in cases involving wilful default.

2.0 Implementation of Indian Accounting Standards (Ind AS) in insurance sector

- Bank and Insurers shall comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning from **April 1, 2018 onwards**, with comparatives for the periods ending March 31, 2018. Ind AS shall be applicable to both standalone financial statements and consolidated financial statements. "Comparatives" shall mean comparative figures for the preceding accounting period.
- Bank and Insurers shall apply Ind AS only as per the above timelines and shall not be permitted to adopt Ind AS earlier.

CAPITAL MARKET

1.0 Review of Offer for Sale (OFS) of Shares through Stock Exchange Mechanism

These guidelines have been modified based on the representation/suggestion received from various stakeholders from time to time.

The retail investors shall bid on T+ 1 day and they may place a price bid or opt for bidding at cut off price. The seller shall make appropriate disclosures in this regard in the OFS notice.

Unsubscribed portion of the shares reserved for retail investors shall be allocated to non-retail bidders (un-allotted bidders on T day who choose to carry forward their bid on T+1 day) on T+1 day at a price equal to cut off price or higher as per the bids. In this regard, option shall be provided to such non-retail bidders to indicate their willingness to carry forward their bids to T+1 day. If the non-retail bidders choose to carry forward their bids to T+1 day, then, they may be permitted to revise such bids. Settlement for such bids shall take place on T+3 day.

DIRECT TAXATION

1.0 More banks to accept I-T payments

The Reserve Bank of India has authorised State Bank of India and its associates, all public sector banks and private banks including HDFC Bank, ICICI Bank, AXIS Bank, IDBI Bank and J&K Bank at Delhi to accept payment of income tax dues in cash or by cheque. There is also a provision for making online payment of tax on the income tax department's Web site. To obviate the inconvenience, assesses in the city are advised in their own interest to avoid last minute rush by remitting their income tax dues sufficiently in advance of the due date.

2.0 Revised guidelines for stay of demand at the first appeal stage on payment of 15%

Under the revised guidelines, where the outstanding demand is disputed before Commissioner (Appeals), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand. In case any deviation from the standard pre-payment of 15% is proposed by the assessing officer, he shall refer the matter to the administrative Principal Commissioner or Commissioner, who after considering all relevant facts shall decide the quantum/ proportion of demand to be paid by the assessee as lump sum payment for granting a stay of the balance demand. In a case where stay of demand is granted by the assessing officer on payment of 15% of the disputed demand and the assessee is still aggrieved, he may approach the jurisdictional

administrative Principal Commissioner or Commissioner for a review of the decision of the assessing officer.

CBDT Press Release dt. 3rd March, 2016

3.0 No Tax Deduction at Source (TDS) on payments by television channels and publishing houses to advertisement companies

It is hereby clarified that no TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the Board's Circular No. 715 dated 8.8.95 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

Circular No. 05/2016 dt. 29th February, 2016

4.0 EPFO tightens norms for withdrawal of Provident Fund

the subscribers will not be able to claim withdrawal of their provident fund after attaining age of 54 years. They would have to wait till attaining the age 57 years.

INDIRECT TAXATION

1.0 No officer to hold sensitive posts beyond 3 years

No officer should remain posted on sensitive posts for more than three years to ensure probity among the government servants, the Central Board of Customs and Excise (CBEC) has said.

It is stated that postings and transfers of all officers/officials are required to be done as per the guidelines and no one should continue to hold posts declared as sensitive for more than three years, CBEC said in a communication to top officials of the Indirect Tax division.

2.0 India eases customs rules for local arms of multinationals

The government has revamped decade and-half-old customs rules and done away with a requirement that made deposit of extra duty on imported goods by such entities mandatory.

The new simplified mechanism has been prescribed to clear up past pendency at Special Valuation Branches (SVBs) of customs. In order to facilitate quick disposal of cases currently pending with SVBs for renewal, a system of one-time declaration is being provided.

CORPORATE LAWS

1.0 Corruption law applicable on top private bankers

The Supreme Court has ruled that a Whole-Time Chairman, Managing Director or Director of a company would be deemed to be a public servant and the Prevention of Corruption Act would apply on them.

Section 46A of the Banking Regulation Act made this clear and the provision cannot be left meaningless.

2.0 HC rejected winding up plea as respondent had not acknowledged debt and wasn't liable to pay debt

The High Court of Gujarat held that where there was no privity of contract between petitioner and respondent-company, and respondent had also not acknowledged its debt, it was not liable to make any payment to petitioner, hence petition for winding up respondent-company at instance of petitioner was not maintainable.

Supreme Telecommunication Ltd. v. Petronet V K Ltd. [2016] 66 taxmann.com 222

FINANCIAL INDICATORS

	Current Rate*	Previous Month	3 Month ago	6 Month ago
3 Month LIBOR (%)	0.64	0.62	0.49	0.33
SENSEX	24623.34	23766.80	25252.32	25622.17
NIFTY	7486.15	7221.40	7683.30	7788.10
CRR (%)	4	4	4	4
REPO (%)	6.75	6.75	6.75	7.25
REVERSE REPO (%)	5.75	5.75	5.75	6.25
Gold (per 10 gm)	29703	28199	25324	25952
Silver (per kg)	37607	36700	33841	34910
Crude (USD/bbl)	38.61	31.64	40.45	48.89
₹ vs USD	67.09	67.88	66.79	63.76
₹ vs Euro	74.94	76.65	73.46	74.71
₹ vs 100 Yen	59.13	59.21	54.91	55.14
₹ vs RMB	10.88	10.43	10.37	10.41
₹ vs Pound	95.75	98.29	101.37	102.29
MCX Aluminium (per kg)	105.15	101.70	98.75	107.00
MCX Copper (per kg)	335.90	306.50	304.05	356.10

**As on March 11, 2016* *(Sources: MoneyControl, NSE, BSE, RBI, MCX)*

Date of Printing : 14th March, 2016
R.N.I. No. 50796/90
Posting Date: 15th March, 2016

Registration No. DL(c)-01/1268/2015-17
Licenced to post without prepayment No. U-(C)-82/2015-17

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